

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

BY
DEPUTY CLERK

WJP

2006 JUL 31 PM 2:30

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

Michel J. Messier

Case No.

-v.-

2:06-cv-153

U.S. Consumer Product Safety Commission

Complaint for Injunctive Relief

This is an action under the Freedom of Information Act 5 USC 552, to order the production of U.S. Consumer Product Safety Commission (hereinafter "USCPSC" and "Agency") records which defendant has improperly withheld from plaintiff. These records are of plaintiff and public interest. In addition, the plaintiff, public, Agency and this Court should be able to review Agency records to compare and contrast them to those attached to ensure compliance with the Agency's 'continuing obligation' directives to Dell per the page 3, attachment 32.

PARTIES

1. The plaintiff, Michel J. Messier (hereinafter "Messier"), at all times relevant to the allegations of the Complaint, has been a resident of the city of Rutland, County of Rutland, State of Vermont.

2. The defendant, the USCPSC, is an agency of the United States has possession of the records.

JURISDICTION

Subject matter jurisdiction exists pursuant to 5 U.S.C. 552(a)(4)(B) which grants a district court of the US jurisdiction to enjoin an agency from improperly withholding records and to order said agency to produce such records to the complainant. Venue is proper in the District of Vermont under 5 U.S.C. 552(a)(4)(B) which grants jurisdiction to the district court in the district which the complainant lives.

NOW COMES Messier and he moves for this honorable Court to Order the

USCPSC to produce records, including but not limited to, those associated with Dell's 'continuing obligation', through FOIA Appeal and of Agency file RP060029, and further states in support thereof; Prompt release of these records/information. It is essential to plaintiff's and the public's health and safety; Consumer's right to know and the Consumer Product Safety Act.

The following documents illustrate plaintiff has exhausted his administrative remedies;

1. USCPSC letter dated July 6, 2006 withheld responsive information contained in Commission recall file RP060029, attachment 1.
2. Plaintiff's June 2, 2006 letter to USCPSC is entered here as an addendum to argument and restated, as attachment 2.
3. USCPSC supplemented by fax on May 25, 2006 with three additional pages, attachment 3.
4. USCPSC letter dated May 5, 2006 responding to January 5, 2006 request, attachment 4.
5. USCPSC letter dated March 21, 2006, attachment 5.
6. Plaintiff's January 5, 2006 FOIA request, attachment 6.
7. USCPSC Recall Release #06-056, attachment 7.
8. USCPSC case number 020521CCN0472 on or about May 21, 2002, attachment 18.

Dell's 'continuing obligation' in this case is illustrated in RP060029 document page 32, attachment 3. USCPSC records regarding laptop/notebook computers and lithium ion battery packs can be considered cumulative relative to the 'continuing obligation' for Latitude laptop computers and batteries from at least as early as September 29, 2000. According to a USCPSC letter to Dell's counsel Mr. John Hodges, Esq., dated September 29, 2000, "If, after filing the "Full Report," the firm receives or learns of information concerning other incidents or injuries, or information that affects the scope, prevalence or seriousness of the defect or hazard, it must report that information to this Division immediately." This 'continuing obligation' language is the same as page 32, of RP060029.

This case and these issues are ripe for judicial review. As per CRN, July 14, 2006, "Dell is enlisting the help of the U.S. Consumer Product Safety Commission in its autopsy of the now-infamous 'exploding laptop' ", attachment 8. Other recent new reports are attached, attachment 9. The USCPSC "discovered a burn hole in bottom of the laptop", a "Dell Latitude" laptop, CPSC Form 182, attachment 10. "As many as 43

laptop fires have been reported in the United States since 2001, according to statistics compiled by the U.S. Consumer Product Safety Commission. No one died, **but some of the laptop users were severely injured, CPSC spokeswoman Julie Vallese said.**“ (attachment 18). According to Scott Wolfson of the USCPSC Public Relations, per my call on August 1, 2006, there are approximately 150 incidents or accidents for lithium ion cell phone batteries, and 150 incidents or accident for lithium ion laptop batteries. These reports, and increasing frequency of incidents, illustrates the urgency and need of timely action in this case for consumers. Dell, Agency and public records appear to show a pattern of incidents and injuries. Battery Digest states in part ,regarding Hewlett Packard batteries, “Sixteen injuries have been reported worldwide, including four in the U.S.” attachment 11. The potential for many more similar incidents based upon Dell’s Sam Stimson statements, as reported in Battery Digest, A Revisit to Lithium-ion Safety by Shirley Georgi, “Sam mentioned that with 740 million cells produced last year, there could be the probability of having 740 “happenings” that are “not very nice.”, attachment 12.

Disclosure of the information is fair and reasonable. The purpose of the Consumer Product Safety Act is to protect the consumer and the public as a whole. Plaintiff and consumers have a right to know the effects of the laptops/notebooks, batteries, and chemicals on other consumers and human health beyond the Product Safety Data Sheet, attachment 13.

The People/ Consumers, the roots supporting the branches of government, have the right to full and fair disclosure of these records. Checks and balance by consumers are important to ensure the quality and accuracy of the Agency’s records/information. The public’s right to disclosure outweighs the company’s claimed right to privacy in regard to these records. The company freely choose to distribute its products to the People. The People have the right to listen to the free (volunteered) speech, records of the company supporting its decision to sell its products, and its settlement with the Agency to recall some, but not all of these products. The People have the right to compare and contrast their records to the government’s. Ultimately, full disclosure is the only way this can be accomplished.

"An agency seeking to withhold information under an exemption to FOIA has the burden of proving that the information falls under the claimed exemption." GC Micro Corp. v. Defense Logistics Agency, 33 F.3d 1109, 1113 (9th Cir. 1994); see also Lewis v. IRS, 823 F.2d 375, 378 (9th Cir. 1987)

Please consider the following as records in this case as well;

Battery Digest, A Revisit to Lithium Ion Safety attachment 12.

Dell faxed Sony Product Safety Data Sheet attachment 13.

Direct from Dell, by Michael Dell attachment 14.

49 CFR Chapter 1 Part 173 (4) attachment 15.

Sony History attachment 16.

The pictures attachment 17.

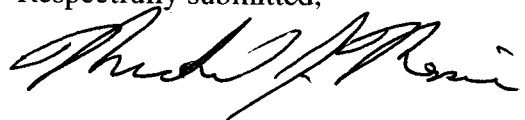
As the court may review the case de novo, that is, the court may create its own record of events without depending on the agency's administrative record. 5 USC 552(a)(4)(B). Please consider as an addendum to my arguments attachment 2, my June 2, 2006 letter to the USCPSC.

WHEREFORE Plaintiff respectfully requests this Honorable Court;

1. Order defendant to provide access to the requested records by the production;
2. Expedite this proceeding as provided for in 28 USC 1657;
3. Order documents be delivered to the plaintiff by produced by August 25, 2006.
4. Toll Messier's federal judicial dates until the instant case is resolved;
5. Award plaintiff costs, including but not limited to, opportunity costs and reasonable attorneys fees in this action, as provided in 5 USC 552(a)(4)(E);
6. Grant such other relief as it may deem just, equitable and appropriate.

DATED: August 1, 2006

Respectfully submitted,



Michel J. Messier
(802) 770-8345